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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,225	09/19/2003	Joseph J. Estwanik	18391.012	7016
21878	7590	09/27/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP 214 N. TRYON STREET HEARST TOWER, 47TH FLOOR CHARLOTTE, NC 28202				AMERSON, LORI BAKER
		ART UNIT		PAPER NUMBER
		3764		

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/667,225	ESTWANIK, JOSEPH J.
	Examiner L Amerson	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/19/03</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

2. The spacing of the lines of the specification is such as to make reading and entry of amendments difficult. New application papers with lines double spaced on good quality paper are required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claims 1-3, 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker. Parker discloses a rocker device (fig. 1) having a lower rocking surface (fig. 1; 13), arcuately shaped (fig. 4) on a flat surface and an upper platform surface (14) having a recess (4). Regarding the language, “for stretching a user’s leg muscles,” “for rocking motion,” “for receiving a user’s knee in a bent condition of the user’s leg for stretching the user’s quadriceps upon rocking motion” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claims 2 and 8, the recess is cushioned (fig. 4; 11). As to claim 3, the rocker device has at least one handle (7). Regarding the language, “for transporting the rocker device” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 5, “the user’s knee is bent at an approximately 90 degree angle has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. Furthermore, a recitation positively claiming non-statutory subject matter (e.g., human body parts) is prohibited. As to claim 6, the upper platform surface is configured to rest on a generally flat surface (fig. 2-3). Regarding the

language, "allowing a user alternatively to position the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 7, see the paragraph for claim 1. Additionally, a first position (fig. 1) wherein the lower rocking surface rests on a generally flat surface and a second position (fig. 2-3) wherein the upper platform surface rests on a generally flat surface. Regarding the language, "allowing the user to position the user's knee in a bent condition of the user's leg in the recess of the upper platform surface for stretching the user's quadriceps upon rocking motion," and "allowing a user to position alternatively the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 9, see the paragraph for claim 3. As to claim 11, see the paragraph for claim 5.

b. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen Wu. Chen Wu discloses a rocker device (1; fig. 3) having a lower rocking surface (11), arcuately shaped on a flat surface and an upper platform surface (12) having a recess (13). Regarding the language, "for stretching a user's leg muscles," "for rocking motion," "for receiving a user's knee in a bent condition of

the user's leg for stretching the user's quadriceps upon rocking motion" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claims 2 and 8, the recess is cushioned (14). As to claim 3, the rocker device has at least one handle (21). Regarding the language, "for transporting the rocker device" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 4, the recess has at least one indentation (semicircular space between 12 and 13). Regarding the language, "for receiving the user's shin bone when the user's knee is received in the recess in a bent condition" has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claim 5, "the user's knee is bent at an approximately 90 degree angle has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. Furthermore, a recitation positively claiming non-statutory subject matter (e.g., human body parts) is prohibited. As to claim 6, the upper platform surface is configured to rest on a generally flat surface (fig. 3-4) allowing a user alternatively to position the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle. As to claim 7, see the paragraph for claim 1. Regarding the language, "a first position wherein the lower rocking surface rests on a generally flat surface and a second position wherein the upper platform surface rests on a generally flat

surface allowing the user to position the user's knee in a bent condition of the user's leg in the recess of the upper platform surface for stretching the user's quadriceps upon rocking motion," and "allowing a user to position alternatively the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 9, see the paragraph for claim 3. As to claim 10, see the paragraph for claim 4. As to claim 11, see the paragraph for claim 5.

c. Claims 1-2, 5-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fery et al. Fery et al disclose a rocker device (fig. 3) having a lower rocking surface (37), arcuately shaped on a flat surface and an upper platform surface (46) having a recess (48) for receiving a user's knee in a bent condition of the user's leg for stretching the user's quadriceps upon rocking motion. As to claims 2 and 8, the recess is cushioned (col. 3, lines 51-55). As to claim 5, "the user's knee is bent at an approximately 90 degree angle has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. Furthermore, a recitation positively claiming non-statutory subject matter (e.g., human body parts) is prohibited. As to claim 6, the upper platform surface is configured to rest on a generally flat surface (fig. 3). Regarding the language "allowing a user alternatively to position the user's

heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 7, see the paragraph for claim 1. Regarding the language, "a first position wherein the lower rocking surface rests on a generally flat surface and a second position wherein the upper platform surface rests on a generally flat surface allowing the user to position the user's knee in a bent condition of the user's leg in the recess of the upper platform surface for stretching the user's quadriceps upon rocking motion," and "allowing a user to position alternatively the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 11, see the paragraph for claim 5.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

d. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fery et al. Fery et al discloses an apparatus in Figure 3 having a rocker device with a lower rocking surface that is arcuately shaped and on a flat surface with an upper platform having a recess for receiving a knee in a bent condition of approximately 90 degrees while the user's legs are stretched comprising the steps of resting the lower surface on a flat surface; placing the user in the recess of the upper platform and rocking (col. 4, lines 20-55). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the step of stretching the leg muscles since the reference is inherently capable of stretching the user's muscles while lying in specific orientation and rocking.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. And Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson